

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 801
90TH GENERAL ASSEMBLY

Reported from the Committee on Miscellaneous Bills and Resolutions, April 13, 2000, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 801 Do Pass.

ANNE C. WALKER, Chief Clerk

3428L.07C

AN ACT

To repeal sections 100.286, 135.429, 178.892, 620.470 and 620.474, RSMo 1994, and sections 135.400, 135.403, 135.430, 135.478, 135.484, 135.766, 208.750, 260.285, 447.708 and 620.1039, RSMo Supp. 1999, relating to business tax credits, and to enact in lieu thereof thirteen new sections relating to the same subject, with an emergency clause for certain sections and an effective date for certain sections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 260.285, RSMo Supp. 1999, is repealed and one new section enacted in lieu thereof, to be known as section 260.285, to read as follows:

260.285. 1. Any manufacturer engaged in this state in production of a meat or poultry food product intended for human consumption that is recycling flexible cellulose casing manufactured from cotton linters used and consumed directly in the production of such food product shall be eligible for a credit as defined in subsection 2 of this section. **For purposes of this section, "cotton linters" means fibers from any plant or wood pulp material used for the creation of flexible cellulose casings.**

2. The credit authorized in subsection 1 shall be equal to the amount of state sales or use taxes paid by a manufacturer to a retailer on such packaging material which is subsequently recycled by either the manufacturer or other person or entity to which the manufacturer conveys such packaging materials, less any consideration received by the manufacturer for such conveyance.

3. A manufacturer shall claim the refund in the month following the month in which the material has been recycled or conveyed for recycling. When claiming a credit pursuant to this section, a manufacturer shall provide a detailed accounting of the amount of packaging material recycled, amount of sales or use tax paid on such material, an affidavit attesting that the manufacturer is eligible pursuant to the provisions of this section for the credit being claimed, **documentation that the activity constitutes recycling as certified by the director of the department of natural resources** and any other documentation determined necessary by the director of the department of revenue. The director shall refund any valid credit claims within sixty days of receipt. If the director determines that a fraudulent claim for the credit has

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

been filed, the director may assess a penalty in an amount not to exceed twice the amount of fraudulent credits claimed.

4. Payment of credits authorized by this section shall not alter the liability of a retailer regarding sales tax on such material. Credits authorized by this section shall be paid from funds appropriated for the refund of taxes.

[5. This section shall become effective October 1, 1991.]

Section B. Because of the need to insure the integrity and equality of treatment of manufacturing taxpayers and taxpayers incurring qualified research expenses, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

Section C. Sections 100.286, 135.429, 178.892, 620.470 and 620.474, RSMo 1994, and sections 135.400, 135.403, 135.430, 135.478, 135.766, 208.750, 447.708 and 620.1039, RSMo Supp. 1999, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 100.286, 135.400, 135.403, 135.406, 135.478, 178.892, 208.750, 447.708, 620.470, 620.474 and 620.1039, to read as follows:

100.286. 1. Within the discretion of the board, the development and reserve fund, the infrastructure development fund or the export finance fund may be pledged to secure the payment of any bonds or notes issued by the board, or to secure the payment of any loan made by the board or a participating lender which loan:

- (1) Is requested to finance any project or export trade activity;
- (2) Is requested by a borrower who is demonstrated to be financially responsible;
- (3) Can reasonably be expected to provide a benefit to the economy of this state;
- (4) Is otherwise secured by a mortgage or deed of trust on real or personal property or other security satisfactory to the board; provided that loans to finance export trade activities may be secured by export accounts receivable or inventories of exportable goods satisfactory to the board;
- (5) Does not exceed five million dollars;
- (6) Does not have a term longer than five years if such loan is made to finance export trade activities; and
- (7) Is, when used to finance export trade activities, made to small or medium size businesses or agricultural businesses, as may be defined by the board.

2. The board shall prescribe standards for the evaluation of the financial condition, business history, and qualifications of each borrower and the terms and conditions of loans which may be secured, and may require each application to include a financial report and evaluation by an independent certified public accounting firm, in addition to such examination and evaluation as may be conducted by any participating lender.

3. Each application for a loan secured by the development and reserve fund, the infrastructure development fund or the export finance fund shall be reviewed in the first instance by any participating lender to whom the application was submitted. If satisfied that the standards prescribed by the board are met and that the loan is otherwise eligible to be secured by the development and reserve fund, the infrastructure development fund or the export finance fund, the participating lender shall certify the same and forward the application for final approval to the board.

4. The securing of any loans by the development and reserve fund, the infrastructure development

fund or the export finance fund shall be conditioned upon approval of the application by the board, and receipt of an annual reserve participation fee, as prescribed by the board, submitted by or on behalf of the borrower.

5. The securing of any loan by the export finance fund for export trade activities shall be conditioned upon the board's compliance with any applicable treaties and international agreements, such as the general agreement on tariffs and trade and the subsidies code, to which the United States is then a party.

6. Any taxpayer shall be entitled to a tax credit against any tax otherwise due under the provisions of chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in the amount of fifty percent of any amount contributed in money or property by the taxpayer to [the development and reserve fund,] the infrastructure development fund [or the export finance fund] during the taxpayer's tax year, provided, however, the total tax credits awarded in any calendar year beginning after January 1, 1994, shall not be the greater of ten million dollars or five percent of the average growth in general revenue receipts in the preceding three fiscal years. This limit may be exceeded only upon joint agreement by the commissioner of administration, the director of the department of economic development, and the director of the department of revenue that such action is essential to ensure retention or attraction of investment in Missouri. If the board receives, as a contribution, real property, the contributor at such contributor's own expense shall have two independent appraisals conducted by appraisers certified by the Master Appraisal Institute. Both appraisals shall be submitted to the board, and the tax credit certified by the board to the contributor shall be based upon the value of the lower of the two appraisals. The board shall not certify the tax credit until the property is deeded to the board. Such credit shall not apply to reserve participation fees paid by borrowers under sections 100.250 to 100.297. The portion of earned tax credits which exceeds the taxpayer's tax liability may be carried forward for up to five years.

7. Notwithstanding any provision of law to the contrary, any taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits allowed in subsection 6 of this section under the terms and conditions prescribed in subdivisions (1) and (2) of this subsection. Such taxpayer, hereinafter the assignor for the purpose of this subsection, may sell, assign, exchange or otherwise transfer earned tax credits:

(1) For no less than seventy-five percent of the par value of such credits; and

(2) In an amount not to exceed one hundred percent of annual earned credits. The taxpayer acquiring earned credits, hereinafter the assignee for the purpose of this subsection, may use the acquired credits to offset up to one hundred percent of the tax liabilities otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo. Unused credits in the hands of the assignee may be carried forward for up to five years, provided all such credits shall be claimed within ten years following the tax years in which the contribution was made. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the board in writing within thirty calendar days following the effective day of the transfer and shall provide any information as may be required by the board to administer and carry out the provisions of this section. Notwithstanding any other provision of law to the contrary, the amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the excess of the par value of such credit over the amount paid by the assignee for such credit shall be taxable as income of the assignee.

135.400. As used in sections 135.400 to 135.430, the following terms mean:

(1) "Certificate", a tax credit certificate issued by the department of economic development in accordance with sections 135.400 to 135.430;

(2) "Community bank", either a bank community development corporation or development bank, which are financial organizations which receive investments from commercial financial institutions regulated by the federal reserve, the office of the comptroller of the currency, the office of thrift supervision, or the Missouri division of finance. Community banks, in addition to their other privileges, shall be allowed to make loans to businesses or equity investments in businesses or in real estate provided that such transactions have associated public benefits;

(3) "Community development corporation", [a not for profit corporation and a recipient of Community Development Block Grant (CDBG) funds pursuant to the Housing Community Development Act of 1974. Such corporations design specific, comprehensive programs to stimulate economic development, housing or other public benefits leading to the development of economically sustainable neighborhoods or communities] **a not-for-profit corporation whose board of directors is composed of business, civic and community leaders, and whose primary purpose is to encourage and promote the industrial, economic, entrepreneurial, commercial and civic development or redevelopment of a community or area, including the provision of housing and community economic development projects that benefit low-income individuals and communities;**

(4) "Department", the Missouri department of economic development;

(5) "Director", the director of the department of economic development, or a person acting under the supervision of the director;

(6) "Investment", a transaction in which a Missouri small business or a community bank receives a monetary benefit from an investor pursuant to the provisions of sections 135.403 to 135.414;

(7) "Investor", an individual, partnership, financial institution, trust or corporation meeting the eligibility requirements of sections 135.403 to 135.414. In the case of partnerships and nontaxable trusts, the individual partners or beneficiaries shall be treated as the investors;

(8) "Missouri small business", an independently owned and operated business as defined in Title 15 U.S.C. Section 632(a) and as described by Title 13 C.F.R. Part 121, which is headquartered in Missouri and which employs at least eighty percent of its employees in Missouri, except that no such small business shall employ more than one hundred employees. Such businesses must be involved in interstate or intrastate commerce for the purpose of manufacturing, processing or assembling products, conducting research and development, or providing services in interstate commerce, but excluding retail, real estate, insurance or professional services. For the purpose of qualifying for the tax credit pursuant to sections 135.400 to 135.430, "Missouri small business" shall include cooperative marketing associations organized pursuant to chapter 274, RSMo, which are engaged in the business of producing and marketing fuels derived from agriculture commodities, without regard for whether a cooperative marketing association has more than one hundred employees. Cooperative marketing associations organized pursuant to chapter 274, RSMo, shall not be required to comply with the requirements of section 135.414;

(9) "Primary employment", work which pays at least the minimum wage and which is not seasonal or part-time;

(10) "Principal owners", one or more persons who own an aggregate of fifty percent or more of the Missouri small business and who are involved in the operation of the business as a full-time professional activity;

(11) "Project", any commercial or industrial business or other economic development activity

undertaken in a target area, designed to reduce conditions of blight, unemployment or widespread reliance on public assistance which creates permanent primary employment opportunities;

(12) "State tax liability", any liability incurred by a taxpayer pursuant to the provisions of chapter 143, RSMo, chapter 147, RSMo, chapter 148, RSMo, section 375.916, RSMo, and chapter 153, RSMo, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265, RSMo, and related provisions[;]

(13) "Target area", a group of blocks or a self-defined neighborhood where the rate of poverty in the area is greater than twice the national poverty rate and as defined by the department of social services in conjunction with the department of economic development. Areas of the state satisfying the criteria of this subdivision may be designated as a "target area" following appropriate findings made and certified by the departments of economic development and social services. In making such findings, the departments of economic development and social services may use any commonly recognized records and statistical indices published or made available by any agency or instrumentality of the federal or state government. No area of the state shall be a target area until so certified by the department of social services and the revitalization plan submitted pursuant to section 208.335, RSMo, has received approval].

135.403. 1. Any investor who makes a qualified investment in a Missouri small business shall be entitled to receive a tax credit equal to forty percent of the amount of the investment or, in the case of a qualified investment in a Missouri small business in a distressed community as defined by section 135.530, a credit equal to sixty percent of the amount of the investment, and any investor who makes a qualified investment in a community bank or a community development corporation shall be entitled to receive a tax credit equal to fifty percent of the amount of the investment if the investment is made in a community bank or community development corporation for direct investment [into a targeted area as defined in section 135.400]. The total amount of tax credits available for qualified investments in Missouri small businesses shall not exceed thirteen million dollars and at least four million dollars of the amount authorized by this section and certified by the department of economic development shall be for investment in Missouri small businesses in distressed communities. Authorization for all or any part of this four million dollar amount shall in no way restrict the eligibility of Missouri small businesses in distressed communities, as defined in section 135.530, for the remaining amounts authorized within this section. No more than twenty percent of the tax credits available each year for investments in community banks or community development corporations for direct investment [into a targeted area] shall be certified for any one project, as defined in section 135.400. The tax credit shall be evidenced by a tax credit certificate in accordance with the provisions of sections 135.400 to 135.430 and may be used to satisfy the state tax liability of the owner of the certificate that becomes due in the tax year in which the qualified investment is made, or in any of the ten tax years thereafter. When the qualified small business is in a distressed community, as defined in section 135.530, the tax credit may also be used to satisfy the state tax liability of the owner of the certificate that was due during each of the previous three years in addition to the year in which the investment is made and any of the ten years thereafter. No investor may receive a tax credit pursuant to sections 135.400 to 135.430 unless that person presents a tax credit certificate to the department of revenue for payment of such state tax liability. The department of revenue shall grant tax credits in the same order as established by subsection 1 of section 32.115, RSMo. Subject to the provisions of sections 135.400 to 135.430, certificates of tax credit issued in accordance with these sections may be transferred, sold or assigned by notarized endorsement thereof which names the transferee.

2. The amount of qualified investments which can be made is limited so that the aggregate of all

tax credits authorized pursuant to the provisions of sections 135.400 to 135.430 shall not exceed nineteen million dollars. [Six million] **Five hundred thousand** dollars in tax credits shall be available **annually from the total amount of tax credits authorized by section 32.110 and subdivision 4 of subsection 2 of section 32.115** as a result of investments in community banks or community development corporations. Aggregate investments eligible for tax credits in any one Missouri small business shall not be more than one million dollars. Aggregate investments eligible for tax credits in any one Missouri small business shall not be less than five thousand dollars as of the date of issuance of the first tax credit certificate for investment in that business.

135.406. Notwithstanding sections 135.403 and 135.405, at least two and one-half million dollars of the total amount of Missouri small business tax credits available for qualified investments in Missouri small businesses shall be used and made available for qualified investments in Missouri small businesses engaged solely in pharmaceutical research and development. The limitations of subsection 2 of section 135.403 and section 135.405 upon the amounts of qualified investments, the aggregate tax credits authorized and the maximum tax credits which may be evidenced by certificates of tax credit issued or owned by a single taxpayer shall not apply to amounts allocated by this section. The director shall give preference in issuing certificates of tax credit to applicants under this section.

[135.429. Except as otherwise specifically provided in sections 135.400 to 135.430, interest and penalty provisions and procedural matters under the provisions of sections 135.400 to 135.430 shall be determined pursuant to and in the manner prescribed in chapter 143, RSMo, chapter 147, RSMo, chapter 148, RSMo, or chapter 153, RSMo, whichever is applicable.]

[135.430. The department of social services shall promulgate such rules and regulations, pursuant to chapter 536, RSMo, and section 660.017, RSMo, as are necessary to define and certify target areas as defined in section 135.400. The department of economic development shall promulgate such rules and regulations, pursuant to chapter 536, RSMo, and subsection 20 of section 620.010, RSMo, as are necessary to implement the provisions of sections 135.400 to 135.440 after a target area has been defined and certified by the department of social services.]

135.478. As used in sections 135.481 to 135.487, the following terms mean:

- (1) "Department", the department of economic development;
- (2) "Director", the director of the department of economic development;
- (3) "Distressed community", as defined in section 135.530;
- (4) "Eligible costs for a new residence", expenses incurred for property acquisition, development, site preparation other than demolition, surveys, architectural and engineering services and construction and all other necessary and incidental expenses incurred for constructing a new market rate residence, which is or will be owner-occupied, which is not replacing a national register listed or local historic structure; except that, costs paid for by the taxpayer with grants or forgivable loans, other than tax credits, provided pursuant to state or federal governmental programs are ineligible;
- (5) "Eligible costs for rehabilitation", expenses incurred for the renovation or rehabilitation of an existing residence including site preparation, surveys, architectural and engineering services, construction, modification, expansion, remodeling, structural alteration, replacements and alterations; except that, costs paid for by the taxpayer with grants or forgivable loans other than tax credits provided pursuant to state or federal governmental programs are ineligible;
- (6) "Eligible residence", a single-family residence forty years of age or older, located in this state

and not within a distressed community as defined by section 135.530, which is occupied or intended to be occupied long-term by the owner or offered for sale at market rate for owner-occupancy and which is either located within a United States census block group which, if in a metropolitan statistical area, has a median household income of less than ninety percent, but greater than or equal to seventy percent of the median household income for the metropolitan statistical area in which the census block group is located, or which, if located within a United States census block group in a nonmetropolitan area, has a median household income of less than ninety percent, but greater than or equal to seventy percent of the median household income for the nonmetropolitan areas in the state;

(7) "Flood plain", any land or area susceptible to being inundated by water from any source or located in a one hundred-year flood plain area determined by Federal Emergency Management Agency mapping as subject to flooding;

(8) "New residence", a residence constructed on land which if located within a distressed community has either been vacant for at least two years or is or was occupied by a structure which has been condemned by the local entity in which the structure is located or which, if located outside of a distressed community but within a census block group as described in subdivision (6) or (10) of this section, either replaces a residence forty years of age or older demolished for purposes of constructing a replacement residence, or which is constructed on vacant property which has been classified for not less than forty continuous years as residential or utility, commercial, railroad or other real property pursuant to article X, section 4(b) of the Missouri Constitution, as defined in section 137.016, RSMo; except that, no new residence shall be constructed in a flood plain or on property used for agricultural purposes. In a distressed community, the term "new residence" shall include condominiums, owner-occupied units or other units intended to be owner-occupied in multiple unit structures;

(9) "Project", new construction, rehabilitation or substantial rehabilitation of a residence that qualifies for a tax credit pursuant to sections 135.475 to 135.487;

(10) "Qualifying residence", a single-family residence, forty years of age or older, located in this state which is occupied or intended to be occupied long-term by the owner or offered for sale at market rate for owner-occupancy and which is located in a metropolitan statistical area or nonmetropolitan statistical area within a United States census block group which has a median household income of less than seventy percent of the median household income for the metropolitan statistical area or nonmetropolitan area, respectively, or which is located within a distressed community. A qualifying residence shall include a condominium or residence within a multiple residential structure or a structure containing multiple single-family residences which is located within a distressed community;

(11) "Substantial rehabilitation", rehabilitation the costs of which exceed fifty percent of either the purchase price or the cost basis of the structure immediately prior to rehabilitation; provided that, the structure is at least fifty years old notwithstanding any provision of sections 135.475 to 135.487 to the contrary;

(12) "Tax liability", the tax due pursuant to chapter 143, 147 or 148, RSMo, other than taxes withheld pursuant to **sections** 143.191 to 143.265, RSMo;

(13) "Taxpayer", any person, partnership, corporation, trust or limited liability company.

[135.766. An eligible small business, as defined in Section 44 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due pursuant to chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo, in an amount equal to any amount paid by the eligible small business to the United States Small Business Administration as a guaranty fee pursuant to obtaining Small Business

Administration guaranteed financing and to programs administered by the United States Department of Agriculture for rural development or farm service agencies.]

178.892. As used in sections 178.892 to 178.896, the following terms mean:

(1) "Agreement", the agreement, between an employer and a junior college district, concerning a project. An agreement may be for a period not to exceed ten years when the program services associated with a project are not in excess of five hundred thousand dollars. For a project where associated program costs are greater than five hundred thousand dollars, the agreement may not exceed a period of eight years. No agreement shall be entered into between an employer and a community college district which involves the training of potential employees with the purpose of replacing or supplanting employees engaged in an authorized work stoppage;

(2) "Board of trustees", the board of trustees of a junior college district;

(3) "Certificate", industrial new jobs training certificates issued pursuant to section 178.895;

(4) "Date of commencement of the project", the date of the agreement;

(5) "Employee", the person employed in a new job;

(6) "Employer", the person providing new jobs in conjunction with a project;

(7) "Industry", a business located within the state of Missouri which enters into an agreement with a community college district and which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excluding retail[, health, or professional services]. "Industry" does not include a business which closes or substantially reduces its operation in one area of the state and relocates substantially the same operation in another area of the state. This does not prohibit a business from expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced;

(8) "New job", a job in a new or expanding industry not including jobs of recalled workers, or replacement jobs or other jobs that formerly existed in the industry in the state;

(9) "New jobs credit from withholding", the credit as provided in section 178.894;

(10) "New jobs training program" or "program", the project or projects established by a community college district for the creation of jobs by providing education and training of workers for new jobs for new or expanding industry in the state;

(11) "Program costs", all necessary and incidental costs of providing program services including payment of the principal of, premium, if any, and interest on certificates, including capitalized interest, issued to finance a project, funding and maintenance of a debt service reserve fund to secure such certificates and wages, salaries and benefits of employees participating in on-the-job training;

(12) "Program services" includes, but is not limited to, the following:

(a) New jobs training;

(b) Adult basic education and job-related instruction;

(c) Vocational and skill-assessment services and testing;

(d) Training facilities, equipment, materials, and supplies;

(e) On-the-job training;

(f) Administrative expenses equal to fifteen percent of the total training costs;

(g) Subcontracted services with state institutions of higher education, private colleges or universities, or other federal, state, or local agencies;

(h) Contracted or professional services; and

(i) Issuance of certificates;

(13) "Project", a training arrangement which is the subject of an agreement entered into between the community college district and an employer to provide program services;

(14) "Total training costs", costs of training, including supplies, wages and benefits of instructors, subcontracted services, on-the-job training, training facilities, equipment, skill assessment and all program services excluding issuance of certificates.

208.750. 1. Sections 208.750 to 208.775 shall be known and may be cited as the "Family Development Account Program".

2. For purposes of sections 208.750 to 208.775, the following terms mean:

(1) "Account holder", a person who is the owner of a family development account;

(2) "Community-based organization", any [religious or charitable association formed pursuant to chapter 352, RSMo,] **not-for-profit organization** that is approved by the director of the department of economic development to implement the family development account program;

(3) "Department", the department of economic development;

(4) "Director", the director of the department of economic development;

(5) "Family development account", a financial instrument established pursuant to section 208.760;

(6) "Family development account reserve fund", the fund created by an approved community-based organization for the purposes of funding the costs incurred in the administration of the program and for providing matching funds for moneys in family development accounts;

(7) "Federal poverty level", the most recent poverty income guidelines published in the calendar year by the United States Department of Health and Human Services;

(8) "Financial institution", any bank, trust company, savings bank, credit union or savings and loan association as defined in chapter 362, 369 or 370, RSMo, and with an office in Missouri which is approved by the director for participation in the program;

(9) "Program", the Missouri family development account program established in sections 208.750 to 208.775;

(10) "Program contributor", a person or entity who makes a contribution to a family development account reserve fund and is not the account holder.

447.708. 1. For eligible projects, the director of the department of economic development, with notice to the directors of the departments of natural resources and revenue, and subject to the other provisions of sections 447.700 to 447.718, may not create a new enterprise zone but may decide that a prospective operator of a facility being remedied and renovated pursuant to sections 447.700 to 447.718 may receive the tax credits and exemptions pursuant to sections 135.100 to 135.150, RSMo, and **sections 135.200 to [135.256] 135.257**, RSMo. The tax credits allowed pursuant to this subsection shall be used to offset the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo. For purposes of this subsection:

(1) For receipt of the ad valorem tax abatement pursuant to section 135.215, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs. The city, or county if the eligible project is not located in a city, must provide ad valorem tax abatement of at least fifty percent for a period not less than ten years and not more than twenty-five years;

(2) For receipt of the income tax exemption pursuant to section 135.220, RSMo, and tax credit for new or expanded business facilities pursuant to sections 135.100 to 135.150, and 135.225, RSMo,

the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs, or combination thereof. For purposes of sections 447.700 to 447.718, the tax credits described in section 135.225, RSMo, are modified as follows: the tax credit shall be four hundred dollars per employee per year, an additional four hundred dollars per year for each employee exceeding the minimum employment thresholds of ten and twenty-five jobs for new and existing businesses, respectively, an additional four hundred dollars per year for each person who is "a person difficult to employ" as defined by section 135.240, RSMo, and investment tax credits at the same amounts and levels as provided in subdivision (4) of **subsection 1 of** section 135.225, RSMo;

(3) For eligibility to receive the income tax refund pursuant to section 135.245, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs, or combination thereof, and otherwise comply with the provisions of section 135.245, RSMo, for application and use of the refund and the eligibility requirements of this section;

(4) The eligible project operates in compliance with applicable environmental laws and regulations, including permitting and registration requirements, of this state as well as the federal and local requirements;

(5) The eligible project operator shall file such reports as may be required by the director of economic development or the director's designee;

(6) The taxpayer may claim the state tax credits authorized by this subsection and the state income exemption for a period not in excess of ten consecutive tax years. For the purpose of this section, "taxpayer" means an individual proprietorship, partnership or corporation described in section 143.441 or 143.471, RSMo, who operates an eligible project. The director shall determine the number of years the taxpayer may claim the state tax credits and the state income exemption based on the projected net state economic benefits attributed to the eligible project;

(7) For the purpose of meeting the new job requirement prescribed in subdivisions (1), (2) and (3) of this subsection, it shall be required that at least ten new jobs be created and maintained during the taxpayer's tax period for which the credits are earned, in the case of an eligible project that does not replace a similar facility in Missouri. "New job" means a person who was not previously employed by the taxpayer or related taxpayer within the twelve-month period immediately preceding the time the person was employed by that taxpayer to work at, or in connection with, the eligible project on a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five hours per week during the taxpayer's tax period for which the tax credits are earned. For the purposes of this section, "related taxpayer" has the same meaning as defined in subdivision [(9)] (11) of section 135.100, RSMo;

(8) For the purpose of meeting the existing job retention requirement, if the eligible project replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, it shall be required that at least twenty-five existing jobs be retained at, and in connection with the eligible project, on a full-time basis during the taxpayer's tax period for which the credits are earned. "Retained job" means a person who was previously employed by the taxpayer or related taxpayer, at a facility similar to the eligible project that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, within the tax period immediately preceding the time the person was employed by the taxpayer to work at, or in connection with, the eligible project on a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five hours per week during the taxpayer's tax period for which the tax credits are earned;

(9) In the case where an eligible project replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, the owner and operator

of the eligible project shall provide the director with a written statement explaining the reason for discontinuing operations at the closed facility. The statement shall include a comparison of the activities performed at the closed facility prior to the date the facility ceased operating, to the activities performed at the eligible project, and a detailed account describing the need and rationale for relocating to the eligible project. If the director finds the relocation to the eligible project significantly impaired the economic stability of the area in which the closed facility was located, and that such move was detrimental to the overall economic development efforts of the state, the director may deny the taxpayer's request to claim tax benefits;

(10) Notwithstanding any provision of law to the contrary, for the purpose of this section, the number of new jobs created and maintained, the number of existing jobs retained, and the value of new qualified investment used at the eligible project during any tax year shall be determined by dividing by twelve, in the case of jobs, the sum of the number of individuals employed at the eligible project, or in the case of new qualified investment, the value of new qualified investment used at the eligible project, on the last business day of each full calendar month of the tax year. If the eligible project is in operation for less than the entire tax year, the number of new jobs created and maintained, the number of existing jobs retained, and the value of new qualified investment created at the eligible project during any tax year shall be determined by dividing the sum of the number of individuals employed at the eligible project, or in the case of new qualified investment, the value of new qualified investment used at the eligible project, on the last business day of each full calendar month during the portion of the tax year during which the eligible project was in operation, by the number of full calendar months during such period;

(11) For the purpose of this section, "new qualified investment" means new business facility investment as defined and as determined in subdivision [(7)] (9) of section 135.100, RSMo, which is used at and in connection with the eligible project. "New qualified investment" shall not include small tools, supplies and inventory. "Small tools" means tools that are portable and can be hand held.

2. The determination of the director of economic development pursuant to subsection 1 of this section, shall not affect requirements for the prospective purchaser to obtain the approval of the granting of real property tax abatement by the municipal or county government where the eligible project is located.

3. (1) The director of the department of economic development, with the approval of the director of the department of natural resources, may, in addition to the tax credits allowed in subsection 1 of this section, grant a remediation tax credit to the applicant for up to one hundred percent of the costs of materials, supplies, equipment, labor, professional engineering, consulting and architectural fees, permitting fees and expenses, demolition [and], asbestos abatement, and direct utility charges for performing the voluntary remediation activities for the preexisting hazardous substance contamination and releases, including, but not limited to, the costs of performing operation and maintenance of the remediation equipment at the property beyond the year in which the systems and equipment are built and installed at the eligible project and the costs of performing the voluntary remediation activities over a period not in excess of four tax years following the taxpayer's tax year in which the system and equipment were first put into use at the eligible project, provided the remediation activities are the subject of a plan submitted to, and approved by, the director of natural resources pursuant to sections 260.565 to 260.575, RSMo.

(2) The director of the department of economic development, with the approval of the director of the department of natural resources, may, in addition to the tax credits otherwise allowed in this section, grant a demolition tax credit to the applicant for up to one hundred percent of the costs of demolition that is not part of the voluntary remediation activities, provided the

demolition is part of a redevelopment plan approved by the local government entity and the department of economic development.

(3) The amount of remediation **and demolition** tax credits issued shall be limited to the least amount necessary to cause the project to occur, as determined by the director of the department of economic development.

(4) The director may, with the approval of the director of natural resources, extend the tax credits allowed for performing voluntary remediation maintenance activities, in increments of three-year periods, not to exceed five consecutive three-year periods. The tax credits allowed in this subsection shall be used to offset the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo. The remediation **and demolition** tax [credit] **credits** may be taken in the same tax year in which the tax credits are received or may be taken over a period not to exceed twenty years.

(5) The project facility [is] **must be** projected to create at least ten new jobs or at least twenty-five retained jobs, or a combination thereof, as determined by the department of economic development, **to be eligible for tax credits under this subsection.**

(6) No more than seventy-five percent of earned remediation tax credits may be issued when the remediation costs were paid, and the remaining percentage may be issued when the department of natural resources issues a "Letter of Completion" letter or covenant not to sue following completion of the voluntary remediation activities. It shall not include any costs associated with ongoing operational environmental compliance of the facility or remediation costs arising out of spills, leaks, or other releases arising out of the ongoing business operations of the facility.

4. In the exercise of the sound discretion of the director of the department of economic development or the director's designee, the tax credits and exemptions described in this section may be terminated, suspended or revoked, if the eligible project fails to continue to meet the conditions set forth in this section. In making such a determination, the director shall consider the severity of the condition violation, actions taken to correct the violation, the frequency of any condition violations and whether the actions exhibit a pattern of conduct by the eligible facility owner and operator. The director shall also consider changes in general economic conditions and the recommendation of the director of the department of natural resources, or his or her designee, concerning the severity, scope, nature, frequency and extent of any violations of the environmental compliance conditions. The taxpayer or person claiming the tax credits or exemptions may appeal the decision regarding termination, suspension or revocation of any tax credit or exemption in accordance with the procedures outlined in subsections 4 to 6 of section 135.250, RSMo. The director of the department of economic development shall notify the directors of the departments of natural resources and revenue of the termination, suspension or revocation of any tax credits as determined in this section or pursuant to the provisions of section 447.716.

5. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax credits, exemptions or refund otherwise allowed in subdivisions (2), (3) and (4) of subsection 1 of this section and the tax credits otherwise allowed in section 135.110, RSMo, or the tax credits, exemptions and refund otherwise allowed in sections 135.215, 135.220, 135.225 and 135.245, RSMo, respectively, for the same facility for the same tax period.

6. The total amount of the tax credits allowed in subsection 1 of this section may not exceed the greater of:

- (1) That portion of the taxpayer's income attributed to the eligible project; or

(2) One hundred percent of the total business' income tax if the eligible facility does not replace a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, and further provided the taxpayer does not operate any other facilities besides the eligible project in Missouri; fifty percent of the total business' income tax if the eligible facility replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the credits are earned, and further provided the taxpayer does not operate any other facilities besides the eligible project in Missouri; or twenty-five percent of the total business income if the taxpayer operates, in addition to the eligible facility, any other facilities in Missouri. In no case shall a taxpayer operating more than one eligible project in Missouri be allowed to offset more than twenty-five percent of the taxpayer's business income in any tax period. That portion of the taxpayer's income attributed to the eligible project as referenced in subdivision (1) of this subsection, for which the credits allowed in sections 135.110 and 135.225, RSMo, and subsection 3 of this section, may apply, shall be determined in the same manner as prescribed in subdivision [(6)] (8) of section 135.100, RSMo. That portion of the taxpayer's franchise tax attributed to the eligible project for which the remediation tax credit may offset, shall be determined in the same manner as prescribed in paragraph (a) of subdivision [(6)] (8) of section 135.100, RSMo.

7. Taxpayers claiming the state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use. Otherwise, the taxpayer's right to claim such state tax benefits shall be forfeited. Unused business facility and enterprise zone tax credits shall not be carried forward but shall be initially claimed for the tax period during which the eligible project was first capable of being used, and during any applicable subsequent tax periods.

8. Taxpayers claiming the remediation tax credit allowed in subsection 3 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use, or during the taxpayer's tax period immediately after the tax period in which the voluntary remediation activities were performed.

9. The recipient of remediation tax credits, for the purpose of this subsection referred to as assignor, may assign, sell or transfer, in whole or in part, the remediation tax credit allowed in subsection 3 of this section, to any other person, for the purpose of this subsection referred to as assignee. To perfect the transfer, the assignor shall provide written notice to the director of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address and the assignee's tax period and the amount of tax credits to be transferred. The number of tax periods during which the assignee may subsequently claim the tax credits shall not exceed twenty tax periods, less the number of tax periods the assignor previously claimed the credits before the transfer occurred.

10. In the case where an operator and assignor of an eligible project has been certified to claim state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section, and sells or otherwise transfers title of the eligible project to another taxpayer or assignee who continues the same or substantially similar operations at the eligible project, the director shall allow the assignee to claim the credits for a period of time to be determined by the director; except that, the total number of tax periods the tax credits may be earned by the assignor and the assignee shall not exceed ten. To perfect the transfer, the assignor shall provide written notice to the director of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address, and the assignee's tax period, and the amount

of tax credits to be transferred.

11. For the purpose of the state tax benefits described in this section, in the case of a corporation described in section 143.471, RSMo, or partnership, in computing Missouri's tax liability, such state benefits shall be allowed to the following:

- (1) The shareholders of the corporation described in section 143.471, RSMo;
- (2) The partners of the partnership. The credit provided in this subsection shall be apportioned to the entities described in subdivisions (1) and (2) of this subsection in proportion to their share of ownership on the last day of the taxpayer's tax period.

620.470. As used in sections 620.470 to 620.481, unless the context clearly requires otherwise, the following terms mean:

- (1) "Department", the Missouri department of economic development;
- (2) "Fund", the Missouri job development fund as established by section 620.478;
- (3) "Industry", an entity the objective of which is to supply a service or the objective of which is the commercial production and sale of an article of trade or commerce. **The term includes a consortium of such entities organized for the purpose of providing for common training to the member entities' employees, provided that the consortium as a whole meets the requirements for participation in this program;**

- (4) "Manufacturing", the making or processing of raw materials into a finished product, especially by means of large-scale machines of industry.

620.474. 1. The department shall establish a basic industry retraining program, the purpose of which is to provide assistance for industries in Missouri for the retraining and upgrading of employees' skills which are required to support new [capital] investment. Such program shall be operated with appropriations made by the general assembly from the fund.

2. Assistance under the basic industry retraining program may be made available for industries in Missouri which make new investments [in manufacturing] without the creation of new employment.

3. The department shall issue rules and regulations governing the awarding of funds administered through the basic industry retraining fund. When promulgating these rules and regulations, the department shall consider such factors as the number of jobs in jeopardy of being lost if retraining does not occur, the amount of private sector investment in new facilities and equipment, the ratio of jobs retained versus investment, the cost of normal, ongoing training required for the industry, the economic need of the affected community, and the importance of the industry to the economic development of Missouri.

620.1039. 1. As used in this section, the term "taxpayer" means an individual, a partnership, or a corporation as described in section 143.441, 143.471, RSMo, or section 148.370, RSMo, and the term "qualified research expenses" has the same meaning as prescribed in 26 U.S.C. 41.

2. **For tax years beginning on or after January 1, [1994,] 2001, the director of the department of economic development may authorize** a taxpayer [may be allowed] **to receive** a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, or chapter 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, [if approved by the director of the department of economic development,] in an amount up to six and one-half percent of the excess of the taxpayer's qualified research expenses, as certified by the director of the department of economic development, within this state during the taxable year over the average of the taxpayer's qualified research expenses within this state over the immediately preceding three taxable years; except that, no tax credit shall be allowed on that portion of the taxpayer's qualified research expenses incurred within this state during

the taxable year in which the credit is being claimed, to the extent such expenses exceed two hundred percent of the taxpayer's average qualified research expenses incurred during the immediately preceding three taxable years. [In order to receive a tax credit pursuant to this section, certification by the director of the department of economic development shall be required as proof that the taxpayer made qualified research expenses during the taxable year.]

3. The director of economic development shall prescribe the manner in which the tax credit may be [claimed] **applied for**. The tax credit [allowed] **authorized** by this section may be claimed by the taxpayer to offset the tax liability imposed by chapter 143, RSMo, or chapter 148, RSMo, that becomes due in the tax year during which such qualified research expenses were incurred. Where the amount of the credit exceeds the tax liability, the difference between the credit and the tax liability may only be carried forward for the next five succeeding taxable years or until the full credit has been claimed, whichever first occurs. The application for [claiming] tax credits [allowed in] **authorized by the director pursuant to** subsection 2 of this section shall be made [in] **no later than the end of** the taxpayer's tax period immediately following the tax period for which the credits are being claimed.

4. Certificates of tax credit issued pursuant to this section may be transferred, sold or assigned by filing a notarized endorsement thereof with the department which names the transferee and the amount of tax credit transferred. The director of economic development may allow a taxpayer to transfer, sell or assign up to forty percent of the amount of the certificates of tax credit issued to and not claimed by such taxpayer pursuant to this section during any tax year commencing on or after January 1, 1996, and ending not later than December 31, 1999. Such taxpayer shall file, by December 31, 2001, an application with the department which names the transferee, the amount of tax credit desired to be transferred, and a certification that the funds received by the applicant as a result of the transfer, sale or assignment of the tax credit shall be expended within three years at the state university for the sole purpose of conducting research activities agreed upon by the department, the taxpayer, and the state university. Failure to expend such funds in the manner prescribed pursuant to this section shall cause the applicant to be subject to the provisions of section 620.017.

5. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to June 27, 1997, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to June 27, 1997, if such rule complied with the provisions of chapter 536, RSMo. The provisions of this section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, including the ability to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule, are subsequently held unconstitutional, then the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void.

[4.] **6.** The aggregate of all tax credits authorized pursuant to this section shall not exceed [ten] **nine million seven hundred thousand** dollars in any [taxable] year.

Section D. Section C of this act shall become effective January 1, 2001, and shall apply to tax years beginning on and after January 1, 2001.

Section E. Section 135.484, RSMo Supp. 1999, is repealed and one new section enacted in lieu thereof, to be known as section 135.484, to read as follows:

135.484. 1. Beginning January 1, 2000, tax credits shall be allowed pursuant to section 135.481 in an amount not to exceed sixteen million dollars per year. Of this total amount of tax credits in any given year, eight million dollars shall be set aside for projects [involving eligible residences] **in areas described in subdivision (6) of section 135.478** and eight million dollars for projects [involving qualifying residences] **in areas described in subdivision (10) of section 135.478**. The maximum tax credit for a project consisting of multiple-unit qualifying residences in a distressed community shall not exceed three million dollars.

2. Any amount of credit which exceeds the tax liability of a taxpayer for the tax year in which the credit is first claimed may be carried back to any of the taxpayer's three prior tax years and carried forward to any of the taxpayer's five subsequent tax years. A certificate of tax credit issued to a taxpayer by the department may be assigned, transferred, sold or otherwise conveyed. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the department specifying the name and address of the new owner of the tax credit and the value of the credit.

3. The tax credits allowed pursuant to sections 135.475 to 135.487 may not be claimed in addition to any other state tax credits, with the exception of the historic structures rehabilitation tax credit authorized pursuant to sections 253.545 to 253.559, RSMo, which insofar as sections 135.475 to 135.487 are concerned may be claimed only in conjunction with the tax credit allowed pursuant to subsection 4 of section 135.481. In order for a taxpayer eligible for the historic structures rehabilitation tax credit to claim the tax credit allowed pursuant to subsection 4 of section 135.481, the taxpayer must comply with the requirements of sections 253.545 to 253.559, RSMo, and in such cases, the amount of the tax credit pursuant to subsection 4 of section 135.481 shall be limited to the lesser of twenty percent of the taxpayer's eligible costs or forty thousand dollars.